Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN RICHARD FRAISER,
Petitioner

v.

TONY HOWERTON, Warden, Ware State Prison,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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59 pp

QUESTIONS PRESENTED

1. Whether a federal habeas corpus application challenging the revocation of parole should be construed as a 28 U.S.C. § 2241 petition.

2. Whether the statute of limitations in 28 U.S.C. § 2244(d)(1) applies to federal habeas corpus applications brought under 28 U.S.C. § 2241.

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No. _____

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

John Richard Fraiser respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals and the order of the District Court are unreported.

JURISDICTION

The United States Court of Appeals for the Eleventh Circuit issued a final judgment on March 27, 2003. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2241, 28 U.S.C. § 2244(d)(1), 28 U.S.C. § 2254, and 28 U.S.C. § 2255 are reprinted in their entirety in the Appendix to this petition.

STATEMENT

Both 28 U.S.C. § 2254 and 28 U.S.C. § 2241 provide state prisoners with a means to challenge "custody in violation of the Constitution or laws or treaties of the United States" through habeas corpus applications. However, unlike § 2241, § 2254 applies only to those "in custody pursuant to the judgment of a State court." Neither statute directly discusses parole revocations.

In 1996, Congress enacted the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), which applies a one-year statute of limitations to federal habeas corpus applications filed by persons "in custody pursuant to the judgment of a State court." See 28 U.S.C. § 2244(d)(1). Unlike § 2254 petitions, § 2241 petitions are not limited to those "in custody

pursuant to the judgment of a State court." As such, the AEDPA's one-year statute of limitations may not apply to habeas corpus applications filed under § 2241.

Petitioner John Richard Fraiser is a state prisoner serving a life sentence. He was convicted and sentenced in 1979. On September 3, 1996, Petitioner was paroled. Subsequently, on May 23, 1997, the Georgia Board of Pardons and Paroles (the "Parole Board") revoked Petitioner's parole status, and he was returned to the Georgia state prison system to resume serving his life sentence.

Petitioner filed a state habeas corpus petition on July 1, 1998, asserting, inter alia, that the revocation of his parole by the Parole Board was done in violation of due process. The state court denied his habeas petition on November 5, 1998, and the Georgia Supreme Court declined review on the matter on November 16, 1999.

On December 15, 1999, Petitioner filed an application for federal habeas corpus relief in the United States District Court for the Northern District of Georgia. The filing of the federal habeas application was more than one year after the revocation of Petitioner's parole.[1] Respondent asserted that Petitioner's habeas application was

[1] This is the case even if the time the state habeas case was pending, from July 1, 1998 through November 16, 1999, is excepted.

barred by the one-year statute of limitations contained in the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA) 28 U.S.C. § 2244(d)(1).

In determining whether the statute of limitations barred Petitioner's habeas application, the District Court first considered which federal habeas statute provided for the relief sought by Petitioner, 28 U.S.C. § 2241 or 28 U.S.C. § 2254. The District Court noted that neither this Court nor the United States Court of Appeals for the Eleventh Circuit had ever determined whether state prisoners challenging the execution of their sentences should proceed under § 2241, like federal prisoners, or whether § 2254 is the sole avenue for state prisoners to obtain the writ under any circumstances. Relying on Montez v. McKinna, 208 F.3d 862 (10th Cir. 2000), Cooper v. McKinna, 203 F.3d 834 (10th Cir. 2000), Batiste v. State of Louisiana Board of Pardon and Parole, 1999 WL 102027 (E.D. La. 1999), and King v. Lynaugh, 729 F.Supp 57 (W.D. Tex. 1990), the District Court held that § 2254 provides the writ of habeas corpus for those state prisoners challenging their convictions or their sentences as originally imposed, and § 2241 is reserved for challenges to the *execution* of such sentences.[2] The District Court also held that

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[2] The District Court noted that this distinction parallels the provisions for federal prisoners, since 28 U.S.C. § 2255 is reserved for challenges to the validity of a conviction or sentence and 28 U.S.C. § 2241 provides the means to challenge the execution of the sentence. See Blau v. United States, 566 F.2d 526

Petitioner's federal habeas application, challenging aspects of his parole, was in effect a challenge to the execution of his sentence, and not a collateral attack on the validity of the original conviction or sentence. Thus, the District Court found that Petitioner's habeas application should be construed as brought pursuant to 28 U.S.C. § 2241 rather than 28 U.S.C. § 2254.

Next, the District Court considered whether the one-year statute of limitations imposed by the AEDPA applied to federal habeas applications brought pursuant to 28 U.S.C. § 2241. The pertinent section provides: "A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a state court." 28 U.S.C. § 2244(d)~~(1). The~~ District Court held that this language defined the class of persons to whom the section applied as all state prisoners, whether proceeding under § 2241 or § 2254. Although the District Court acknowledged that the action of the Parole Board was not a "judgment of a state court," it nonetheless concluded that the statute of limitations barred consideration of Petitioner's application. It therefore dismissed Petitioner's due process challenge to his parole revocation.

The United States Court of Appeals for the Eleventh Circuit issued a certificate of appealability to consider: (1) whether a federal habeas application

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(5th Cir. 1978); United States v. DiRusso, 535 F.2d 673 (1st Cir. 1976).

challenging the revocation of parole should be brought under 28 U.S.C. § 2241 or under 28 U.S.C. § 2254; and (2) whether the statute of limitations in 28 U.S.C. § 2244(d)(1) applies to federal habeas applications brought pursuant to 28 U.S.C. § 2241.

Relying on its prior decision in Mason v. Askew, 484 F.2d 642 (5th Cir. 1973), the Court of Appeals determined that the District Court erred in considering Petitioner's federal habeas application under 28 U.S.C. § 2241 and that federal habeas corpus challenges by state prisoners to the revocation of parole should proceed under 28 U.S.C. § 2254. However, Mason held only that a state prisoner challenging the revocation of his parole could not maintain an action under 42 U.S.C. § 1983, and must instead seek a writ of habeas corpus as the proper vehicle for such a challenge. In that case, the prisoner happened to have filed his petition pursuant to 28 U.S.C. § 2254, but the court in Mason had no occasion to consider whether it should have been brought under 28 U.S.C. § 2241 instead. Moreover, the Court of Appeals failed to acknowledge that the Mason case was decided prior to the adoption of the AEDPA and at that time it made no practical difference whether a federal habeas application was construed pursuant to § 2241 or § 2254; and failed to acknowledge the substantial changes to federal habeas corpus law

following this Court's decision in Felker v. Turpin, 518 U.S. 651 (1996).[3]

Because the Court of Appeals determined that state prisoners' challenges to parole revocation should be brought pursuant to 28 U.S.C. § 2254 rather than § 2241, it did not consider whether the statute of limitations in 28 U.S.C. § 2244(d)(1) applied to § 2241 applications. The Court of Appeals thus affirmed the decision of the District Court to dismiss Petitioner's habeas corpus application.

REASONS FOR GRANTING THE PETITION

A. The Circuits Are Profoundly Split as to How Habeas Corpus Petitions Challenging State Parole Revocations Should Be Treated.

Although almost seven years have passed since the adoption of the AEDPA, no consensus exists among the Circuits concerning the treatment of

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[3] Furthermore, although the Court of Appeals held that Mason compelled it to find that only § 2254 could be used to challenge parole revocations, a majority of district courts in the Fifth Circuit facing the same precedent have found that § 2241, not § 2254, is the proper statute for habeas challenges to parole board decisions. See Ballenger v. Stalder, Civ. No. 98-2139 Sec. "S" (4), 1999 U.S. Dist. LEXIS 18793 at *1, note 1 (E.D. La. April 28, 1999); Batiste v. State of Louisiana Board of Pardon and Parole, Civ. No. 98-2543 Sec. "C," 1999 U.S. Dist. LEXIS 2177 at *1 (E.D. La. Feb. 25, 1999); King v. Lynaugh, 729 F. Supp. 57, 58 (W.D. Tex. 1990).

habeas corpus challenges to parole revocations by state prisoners. Rather, the Circuits have adopted a variety of often conflicting approaches to such petitions.

As a result, a state prisoner's chances of having the merits of his federal habeas corpus petition heard depend largely on the federal district in which he is imprisoned. Only this Court's intervention will ensure that each prisoner faces the same procedural hurdles in each federal district. Consistent procedures among the Circuits would in turn provide clarity and predictability for those state prisoners who wish to challenge their parole revocations.

1. The Circuits are divided as to whether challenges to parole revocations by state prisoners should be brought under 28 U.S.C. § 2241 or 28 U.S.C. § 2254.

The Tenth Circuit has repeatedly held that habeas corpus petitions challenging the execution of sentence, including the decisions of parole boards, are properly filed only under § 2241. See Smith v. Grubbs, 42 Fed. Appx. 370, 371-372 (10th Cir. 2002); Algenstedt v. Champion, 42 Fed. Appx. 129, 130 (10th Cir. 2002); Henderson v. Scott, 260 F.3d 1213, 1214 (10th Cir. 2001); Tracy v. Addison, 16 Fed. Appx. 928, 928-929 (10th Cir. 2001); Morello v. Utah, 10 Fed. Appx. 788, 789 (10th Cir. 2001); Hall v. Saffle, 10 Fed. Appx. 768, 770 (10th Cir. 2001); Golden v. Kaiser, 1 Fed. Appx. 841, 842, note 2 (10th Cir. 2001); Childers

v. Champion, No. 00-5056, 2000 U.S. App. LEXIS 24901 at *6 (10th Cir. Oct. 4, 2000); Adams v. Saffle, No. 00-6195, 2000 U.S. App. LEXIS 27816 at *2, note 2 (10th Cir. Nov. 6, 2000); Poulos v. McKinna, No. 99-1563, 2000 U.S. App. LEXIS 6449 at *4 (10th Cir. April 7, 2000); Nguyen v. McKinna, No. 99-1408, 2000 U.S. App. LEXIS 6447 at *3 (10th Cir. April 7, 2000); Montez v. McKinna, 208 F.3d 862, 865 (10th Cir. 2000); Osborn v. Everett, No. 99-8071, 2000 U.S. App. LEXIS 4672 at *4, note 3 (10th Cir. March 23, 2000); Cooper v. McKinna, No. 99-1437, 2000 U.S. App. LEXIS 1405 at *4 (10th Cir. Feb. 2, 2000).

Similarly, the Fourth Circuit has held that petitions challenging the execution of sentence should only be brought under § 2241. See Copson v. Virginia Parole Board, No. 98-7832, 2000 U.S. App. LEXIS 22966 at *1 (4th Cir. Sep. 12, 2000).

The Ninth Circuit has also recognized habeas corpus petitions challenging the decisions of prison disciplinary commissions under § 2241, albeit without discussion as to whether § 2254 might also be available. See Jameson v. Butler, 44 Fed. Appx. 104, 104 (9th Cir. 2002).

In contrast, the Second, Third, Eighth, and, under its decision in this case, the Eleventh Circuit, have ruled that state prisoners may rely only on 28 U.S.C. § 2254 for *any* habeas petition, including challenges to parole decisions. See Cook v. New York State Division of Parole, 321 F.3d 274, 278-279 (2nd

Cir. 2003); Faulkner v. Penn. Dept. of Corrections, 221 F. Supp. 2d 560, 562 (E.D. Penn. 2002); Coady v. Vaughn, 251 F.3d 480, 485 (3rd Cir. 2001); Crouch v. Norris, 251 F.3d 720, 723 (8th Cir. 2001); Rossney v. Travis, 00 Civ. 4562 (JGK), 2003 U.S. Dist. LEXIS at *11 (S.D.N.Y. Jan. 17, 2003).

Although the Seventh Circuit has not yet addressed the issue of habeas corpus challenges to parole revocations, courts in the Seventh Circuit have consistently held that only § 2254 may be used to challenge the decisions of prison disciplinary committees. See Moffat v. Broyles, 288 F.3d 978, 980 (7th Cir. 2002); Montgomery v. Anderson, 262 F.3d 641, 643 (7th Cir. 2001); Walker v. O'Brien, 216 F.3d 626, 633 (7th Cir. 2001). As such, the Seventh Circuit should be included among the circuits requiring petition under § 2254.

The case law in the Fifth and Sixth Circuits is somewhat contradictory. In the Fifth Circuit, a majority of courts have held that § 2241, not § 2254, should be used exclusively by state prisoners challenging the decisions of parole boards. See Ballenger v. Stalder, Civ. No. 98-2139 Sec. "S" (4), 1999 U.S. Dist. LEXIS 18793 at *1, note 1 (E.D. La. April 28, 1999); Batiste v. State of Louisiana Board of Pardon and Parole, Civ. No. 98-2543 Sec. "C," 1999 U.S. Dist. LEXIS 2177 at *1 (E.D. La. Feb. 25, 1999); King v. Lynaugh, 729 F. Supp. 57, 58 (W.D. Tex. 1990).

However, one district, the Northern District of Texas, has held to the contrary. In the Northern District of Texas, only § 2254 may be used by state prisoners challenging the execution of their sentences, including parole revocations. See Washington v. Cockrell, No. 3-02-CV-2088-P, 2002 U.S. Dist. LEXIS 21282 at *1, note 1 (N.D. Tex. Oct. 30, 2002); Estes v. Johnson, No. 3:00-CV-1890-L, 2001 U.S. Dist. LEXIS 14814 at *1, note 1 (N.D. Tex. July 30, 2001).

Similarly, many courts in the Sixth Circuit have repeatedly held that petitions challenging state parole board decisions should only be filed under § 2241. See Clark v. Carr, Civ. No. 01-CV-733340-DT, 2002 U.S. Dist. LEXIS 14984 at *1 (E.D. Mich. July 30, 2002); Barclay v. Renico, Civ. No. 01-CV-73138-DT, 2002 U.S. Dist. LEXIS at *6, note 1 (E.D. Mich. June 6, 2002); Moser v. Phillips, Civ. No. 01-CV-73239-DT, 2002 U.S. Dist. LEXIS 8913 at *1 (E.D. Mich. April 30, 2002).

Other courts in the Sixth Circuit have considered § 2241 petitions challenging the decisions of parole boards without further discussion. See Johnson v. Tyszkiewicz, Civ. No. 00-CV-73004-DT, 2001 U.S. Dist. LEXIS 3024 at *1; Lee v. Withrow, 76 F. Supp. 2d 789, 794 (E.D. Mich. 1999).

In direct contradiction to this precedent, however, one court in the Sixth Circuit has specifically held that only § 2254 may be used to challenge the decisions of state parole boards. See

Ward v. Renico, Civ. No. 02-CV-70514-DT, 2002 U.S. Dist. LEXIS 5187 at *1, note 1 (E.D. Mich. March 15, 2002). Another court in same district considered a petition challenging denial of parole filed under § 2254 without consideration as to whether the petition should instead have been filed under § 2241. See Ferguson v. Trombley, Civ. No. 01-CV-72689-DT, 2002 U.S. Dist. LEXIS 12337 at *4 (E.D. Mich. June 7, 2002).

2. The Circuits are similarly split in applying the AEDPA's one-year statute of limitations to petitions filed under 28 U.S.C. § 2241.

Among those Circuits construing state prisoner challenges to the execution of sentence as § 2241 petitions, the Circuits are split as to whether the statute of limitations in § 2244(d)(1) should be applied.[4]

The Ninth and Tenth Circuits clearly apply the one-year statute of limitations to § 2241 petitions. See Jameson, 44 Fed. Appx. at 104; Morello, 10 Fed. Appx. at 789; Hall, 10 Fed. Appx. at 771; Golden, 1 Fed. Appx. at 841; Osborn, 2000 U.S. App. LEXIS 4672, at *5.

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[4] Petitioner acknowledges that the one year statute of limitations in § 2244(d)(1) applies to petitions filed under § 2254. Therefore, if his petition is considered as one filed under § 2254, it will be time-barred.

In so holding, however, the Ninth and Tenth Circuits have improperly limited the jurisdiction of federal courts to consider all habeas corpus petitions filed under § 2241 exceeding the one-year statute of limitations, and thereby these imposed a significant limitation on § 2241 petitions without any clear instruction from Congress. As such, these holdings are at odds with this Court's decision in Felker v. Turpin. 518 U.S. at 651. (see infra pp. 15-16).

In contrast to the decisions of the Ninth and Tenth Circuits, other Circuits have suggested that the statute of limitations does *not* apply to § 2241 petitions. For example, the Court of Appeals of the Fourth Circuit has expressly held that the one year statute of limitations in § 2244(d)(1) does not apply to § 2241 petitions.[5] See Copson, 2000 U.S. App. LEXIS 22966 at *1.

Moreover, at least one district court from the Sixth Circuit has noted in dicta that the statute of limitations in § 2244(d)(1) might not apply to § 2241 petitions. See Frazier v. Hesson, 40 F. Supp. 957, 960, note 2 (W.D. Tenn. 1999) (prisoner not entitled to habeas review regardless of application of statute of limitations, although one-year statute of limitations

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[5] A subsequent district court decision has cast this unpublished decision into doubt by applying the one year statute of limitation to both § 2254 and § 2241 petitions. See McClean v. Smith, 193 F. Supp. 2d 867, 872 (M.D.N.C. 2002). Importantly, however, the district court in McClean seemed to have been unaware of the earlier Copson decision. Id. at 872, note 7.

"arguably" irrelevant if petition considered one filed under § 2241).

The Seventh Circuit has also refused to apply the statute of limitations of § 2244(d)(1) to habeas corpus petitions challenging the decisions of prison disciplinary committees. See Cox v. McBride, 279 F.3d 492, 494 (7th Cir. 2002) (although petitions considered under § 2254).

B. Given The Sheer Number of Routine Parole Revocations in This Country, The Issues In This Case Have Important National Significance.

The treatment of habeas corpus petitions challenging parole revocation has significant national importance. According to one recent report, approximately 203,000 parole violators were returned to prison in the year 2000. See Jeremy Travis & Sarah Lawrence, *Beyond the Prison Gates: The State of Parole in America*, Urban Institute, Justice Policy Center, Nov. 2002, at p. 21. A significant number of these prisoners will have no means to challenge the revocation of their parole other than through federal habeas corpus petitions.

As already discussed, however, some Circuits apply the AEDPA's one-year statute of limitations to such petitions while others do not. By addressing the issues in the instant case, the Court can craft a more consistent and even-handed approach among all the federal districts. In turn, predictability and clarity

will result for the significant number of state prisoners who will file habeas corpus challenges to their parole revocations in the future.

C. The Eleventh Circuit's Decision Conflicts with This Court's Decision in Felker v. Turpin.

In Felker v. Turpin, this Court held that the AEDPA did not affect the Court's original jurisdiction to hear habeas corpus petitions filed under § 2241. 518 U.S. 651, 658 (1996). Although the Court recognized that the AEDPA imposed serious new limitations on its ability to hear habeas corpus petitions through appeal or certiorari, the Court declined to apply the AEDPA's severe limitations to the Court's original jurisdiction to hear habeas corpus petitions under § 2241 . Id. at 660-661.

Citing Ex parte Yerger, 75 U.S. (8 Wall.) 85, 19 L.Ed. 332 (1869), the Court reiterated in Felker that "[r]epeals by implication are not favored." 518 U.S. at 660. As such, the Court's original jurisdiction should not be abridged unless the exercise of original jurisdiction would be completely "repugnant" to the limitations imposed on the Court's ability to hear habeas petitions through appeal or certiorari. Id.

Felker thus stands for the proposition that § 2241 is to remain unfettered, unless Congress expressly directs otherwise. Restrictions, such as a

statute of limitations, therefore should not be placed on § 2241 absent clear Congressional instruction.

The Court of Appeals for the Eleventh Circuit's ruling in the instant case is at odds with this Court's decision in Felker. By applying the statute of limitations in § 2244(d)(1) to all § 2241 petitions, the Eleventh Circuit has limited the availability of § 2241 without clear Congressional instruction.

Moreover, the Eleventh Circuit's decision limits the jurisdiction of the federal courts. By imposing a statute of limitations, the ability of federal courts to hear § 2241 petitions diminishes as petitions that could otherwise be heard become time-barred.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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